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No. (1)

Supreme Court U.S.
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In The

Supreme Court of the United States

KAREN K. DANIELS, Pro Se,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

KAREN K. DANIELS, Pro Se, Petitioner
778 Mulberry Street
Macon, Georgia 31201
(478) 741-3000

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Eleventh Circuit Court of Appeals erred in affirming the district court's statutory construction of 26 U.S.C. § 6103?

II. Whether the Eleventh Circuit Court of Appeals erred in affirming the district court's grant of summary judgment where the district court had already dismissed Daniels' pleadings in entirety pursuant to F.R.C.P. 12(b)(6)?

LIST OF PARTIES

Pursuant to Rule 14(b), the following list identifies all of the parties before the United States Court of Appeals for the Eleventh Circuit.

Karen K. Daniels was the appellant below.

The United States of America was the appellee below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Karen K. Daniels respectfully requests this Court to issue a writ of certiorari to review a decision of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The decisions of the United States Court of Appeals for the Eleventh Circuit are unpublished and have not been reported. They are reprinted at Pet. App. 4-14. The decision of the United States District Court for the Northern District of Georgia has not been reported. It is reprinted at Pet. App. 1-2, 15-17.

JURISDICTION

The Court of Appeals' judgments were entered on October 15, 2007 and January 14, 2008. On April 11, 2008, this Court, per Justice Thomas, granted an extension for filing the Petition for Writ of Certiorari to and including June 12, 2008. Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

FEDERAL STATUTORY, REGULATORY AND INTERNAL REVENUE MANUAL PROVISIONS INVOLVED

This case involves 26 U.S.C. § 7431, known as Civil damages for unauthorized inspection or disclosure of returns and return information pursuant to 26 U.S.C. § 6103(h)(1) and (k)(6), known as Confidentiality and disclosure of return and return information; 26 U.S.C. § 7213, known as Unauthorized disclosure of information; 31 U.S.C. § 330, known as Practice before the Department; 31 C.F.R. Part 10 (Treasury Circular 230), known as Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service; 26 U.S.C. § 7805, known as Rules and Regulations; 5 U.S.C. § 500(b), known as Administrative practice; general provisions; 5 U.S.C. § 101, known as Executive departments; 5 U.S.C. § 301, known as Departmental regulations; 26 C.F.R. Part 601, known as Conference and Practice Requirements; Internal Revenue Manual Provisions, known as IRM § 1.1.1.1, § 1.1.1.2, § 1.1.20.1(1)(A), (B), (F), § 1.1.20.2(3)(B), (D), (G) and (H), § 1.1.20.2.1(2)(A)(G), (H), § 1.1.20.2.2(2)(A),(B), § 1.1.20.4, § 1.1.20.5, § 1.2.10.1.1, § 1.11.2.1, § 1.11.1.7, § 1.16.13.3.2, § 1.25.1.1, § 5.1.1.7.6.2, § 5.8.10.8.4, § 8.6.1.1.2.2, § 8.6.1-1, § 8.6.1.1.2.3, § 8.10.1.1.3.2(1), § 11.3.22.4.1, § 11.3.38.6, § 11.3.38.6.1, § 21.3.10.8, § 21.3.10.8.(4)

INTRODUCTION

This case presents questions as fundamental and important as those the Court has faced in areas of violation of constitutional privacy rights.

Karen K. Daniels, a licensed attorney practicing in Macon, Georgia, has never filed a power of attorney or notice of intent to represent anyone constituting practice before the Internal Revenue Service. Pet. App. 38-43, 56-57.

Daniels' pleadings stated one claim – that access to and disclosure of her return and return information by Office of Professional Responsibility and Internal Revenue Service employees was only permitted by those employees who demonstrated a "material interest," who possessed the requisite "need to know," and whose "official duties" required such inspection or disclosure for tax administration purposes. Access by anyone else constituted a disclosure violation.

The Office of Professional Responsibility is a division within the Internal Revenue Service charged with administering and enforcing rules and regulations promulgated by the Secretary of Treasury governing the practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries and Appraisers before the Internal Revenue Service. This is not a difficult case. It has to do with authority given by statute to the Secretary of the Treasury to promulgate regulations that fall in line with 26 U.S.C. § 6103. Prior to accessing or disclosing confidential return and return information 26 U.S.C.

§ 6103(e) requires the showing of a material interest that OPR's interest would have been if Daniels had actually filed a power of attorney and presented her credentials. 26 U.S.C. § 6103(h)(1) requires that disclosures be limited to someone whose official duties require access and/or disclosure; OPR had no need or official duties absent a filed power of attorney and submission of Daniels' credentials. 26 U.S.C. § 6103(k)(6) is used for investigative purposes, and controlled by regulation; official duties of OPR do not attach without a power of attorney and the presentation of her credentials.

Petitioner, Karen K. Daniels, is a licensed attorney who practices in various areas of law in Macon, Georgia; she has never, however, practiced before the Agency. And, no documentation has been produced by the government establishing that Daniels has ever practiced before the IRS. Pet. App. 38-42, 50-57.

Regulations promulgated by the Secretary provide him with the authority to establish the structure of the agency, creating specific branches, divisions, sections and assigning the duties and functions of each to insure efficiency, uniformity, privacy and fairness in the business of the agency. The duty, function and authority of each branch, division and section are unique, controlled and essentially autonomous. Collection branch collects; examination branch examines and the Office of Professional Responsibility enforces standards of conduct over those who have actually practiced before the Agency. Pet. App. 30-31.

The Office of Professional Responsibility (OPR) was created for the sole purpose of administering 31 U.S.C. § 330 – Practice Before the Department and 31 C.F.R. Part 10 (Treasury Circular 230), the law governing practice before the agency. Pet. App. 26-37.

Attorneys do not have to pass a test to practice before the Department of Treasury or Internal Revenue Service; attorneys, by virtue of their education need only present credentials showing they are in good standing with the highest court in their state. Until an attorney files a notice of intent to practice and furnishes those credentials, the question of eligibility and authority of OPR does not arise. Once actual practice exists, and a complaint or matter indicating a violation of 31 C.F.R. Part 10, 26 C.F.R. §§ 601.501-509 occurs, the matter is referred to OPR. It is at this point and this point only that the OPR is authorized to determine continued eligibility, which determination may include access to tax return and tax return information. 26 C.F.R. Part 601.501-509.

Authority for the Secretary of Treasury to write the rules and regulations governing all practitioners before the IRS are found in Sec. 3, 23 Stat. 258, §§ 2-12, 60 Stat. 237 et seq.; 5 U.S.C. §§ 101, 301, 500, 551-559; 31 U.S.C. § 330; Reorganization Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 C.F.R. §§ 1949-1953, Comp., p. 1017.

The Secretary of Treasury has exercised this authority and established the structure of the agency, creating specific branches, divisions, sections and

assigning the duties and functions of each to insure efficiency, uniformity, privacy and fairness in the business of the agency. The duty, function and authority of each branch, division and section are unique, controlled and essentially autonomous. Collection branch collects, examination branch examines and the Office of Professional Responsibility administers and enforces the Secretary's standards of conduct but does not engage in collecting or examining tax liabilities. Pet. App. 26-37.

The Internal Revenue Manual contains the publication of the functions and policy and is the primary source of instruction to IRS employees. Pet. App. 31, 32. Under Public Law 105-206, section 1203 (printed as a note in 26 U.S.C. § 7804) Congress imposed accountability upon the IRS employees for the law and policy contained in the statutes, regulations and IRM as well.

To protect taxpayers' and employees' privacy, Congress enacted privacy laws at 26 U.S.C. § 6103. 26 U.S.C. § 6103 is a general disclosure statute which, although it does not *categorically* prohibit intra-agency disclosure, it quantifies it to those whose *official duties* require it. Congress does not micromanage the executive branch; Congress provides, as it did here, broad authority to manage, leaving the executive to determine the needs of disclosure within its structure based on the function of each individual within duty sections. The Secretary, in his Internal Revenue Manual (IRM), established a *need to know* criteria which specifically prohibits access to tax

return and tax return information to a case-by-case basis. Pet. App. 26-37. No employee can randomly access even family members' or friends' records unless or until specifically authorized to do so.

STATEMENT OF THE CASE

Karen K. Daniels, a licensed attorney practicing in Macon, Georgia, has never filed a power of attorney or notice of intent to represent anyone constituting practice before the Internal Revenue Service. Pet. App. 38-43, 56-57, which supported fact has not been rebutted by OPR.

In December 2001, an IRS employee investigating abusive tax shelters in Florida came across Daniels' name and wrote a preliminary report indicating possible participation, which participation was almost immediately discredited. The employee's initial report was referred two months later by another PPS employee (PPS is Practitioner Priority Services) to the OPR without any confirmation of actual practice attached. The IRS' published internal policy recommends use of Form 8484 or at the least, requires a copy of a power of attorney statement based on first hand knowledge of practice or other substantive confirming documentation. Pet. App. 33, 35 and 37.

Upon receipt of the incomplete referral, OPR, in order to avoid violating 26 U.S.C. § 6103 and committing disclosure violations, was required to either return the form for specificity or perform the

validation of practice immediately and expeditiously. At all relevant times there existed systemic methods for determining practices including databases maintained containing records of all practicing attorneys, certified public accountants, enrolled agents, actuaries and appraisers. Instead, the OPR immediately opened an investigation on Daniels' and noticed her of the same.

Given the PPS referral failed to provide confirmation of practice, OPR was duty bound to determine practice in accordance with agency policy. All subsequent inquires other than proper attempts to confirm actual practice and all receipts of tax return and tax return information made by or received by OPR constitute intra-agency privacy and disclosure violations.

The IRM contains written instructions for employees to use for reporting inadvertent receipt of return and return information or knowledge that someone has intentionally violated policy regarding such records, none of which were ever filed. Pet. App. 36-37.

Soon after being notified of the OPR investigation Daniels submitted an Affidavit under penalty of perjury notifying OPR that she had never practiced before the IRS. Pet. App. 56-57. Daniels also furnished OPR with a Letter of No Record of practice requested and obtained from the Atlanta Disclosure Office. Pet. App. 50-51. OPR ignored her Affidavit, Letter of No Record, all of her correspondence, and

requests for a hearing. OPR openly solicited and received intra-agency disclosure of tax return, tax return information and records of all kinds from the examination branch in Atlanta and PPS employees nationwide.

A division within the Internal Revenue Service, the Office of Professional Responsibility is charged with administering and enforcing the Secretary of Treasury' rules and regulations governing attorneys, certified public accountants, enrolled agents, enrolled actuaries, and appraisers (professionals) *practicing* before the IRS; it is not a part of the agency routinely investigating taxpayers for the purpose of determining or collecting a tax liability. In fact, OPR's only authorized function is to administer and enforce the Secretary of Treasury's rules and regulations on attorneys, certified public accountants, enrolled agents, various actuaries and appraisers practicing before the agency. To the extent that a professional actually practicing before IRS (a practitioner) fails to meet the standards in 31 C.F.R. part 10 regarding his or her personal tax liabilities (ascertained through the IRS examination division), OPR may access return and return information for purposes of possible discipline.

On July 11, 2003, Daniels' attorney responded by sending a notice letter to the Department of the Treasury with Daniels' sworn Affidavit enclosed as proof that she had never practiced before the Agency. Pet. App. 52-57. No response was forthcoming.

On July 30, 2003, Daniels' attorney notified the Appeals Area Director, IRS, of the above facts and of the IRS' mandate in their policy manual at IRM 8.10.1.1.3.2 that "Unless the practitioner has engaged in actual practice . . . disciplinary proceedings may not be instituted . . . " Pet. App. 44-49. Again, no response.

The federal district court rendered its decision on motions before it by first dismissing Daniels' complaint in its entirety for failure to state a claim upon which relief can be granted. Pet. App. 10, 11, 12. Following its F.R.C.P. 12(b)(6) dismissal, the court denied Daniels' discovery motions as moot and then granted summary judgment for the government. Pet. App. 12, 13.

After two years, a belated, nationwide telephone and internet effort was made by OPR to determine if Daniels had ever practiced before the IRS, some of which internet e-mail correspondence was performed on un-secure lines containing Daniels Social Security Number. Eventually, the effort resulted in confirmation that, in fact, Daniels had not practiced before the agency.

OPR is not a part of the agency routinely investigating taxpayers for the purpose of determining or collecting a tax liability. In fact, OPR's only authorized function is to administer and enforce the Secretary of Treasury's rules and regulations on attorneys, certified public accountants, enrolled agents, various actuaries and appraisers practicing before the agency.

To the extent a practitioner (attorney actually practicing before IRS) fails to meet the standards in 31 C.F.R. part 10 regarding his or her personal tax liabilities (ascertained through examination division) OPR may access for purposes of discipline. Pet. App. 26-27, 28, 29, 32, 33.

The rules and regulations OPR administers are found in 31 C.F.R. part 10, also known as Circular 230 and 26 C.F.R. §§ 601.501-509 and do not apply to attorneys at large; they apply only when an attorney files what amounts to a Notice of Appearance, i.e., power of attorney intending to represent a claimant before the IRS and Department of Treasury. Pet. App. 35.

Unless and until OPR validated that Daniels had actually practiced before the IRS, OPR was not authorized to view Daniels tax returns, tax return information, other agency tax records, access Choice Point for private credit or personal records, investigate or otherwise build a case against Daniels possible and potential eligibility based on her personal tax matters.

After enduring three years of stress and expense without benefit of a hearing to clear her good name, and after repeated attempts to obtain closure and/or find out the status of OPR's alleged claims, Daniels filed suit in the district Court for the Northern Dis trict of Georgia for disclosure violations pursuant to 26 U.S.C. §§ 6103, 7213 and 7431.

The government claimed that OPR had the right to pursue the investigation, including receipt of all

tax return and tax return information because Daniels was eligible for practice and 26 U.S.C. §§ 6103, 7213 and 7431 did not categorically prohibit intra-agency disclosure of return and tax return information to Department of Treasury employees. The district court recognized that the United States never responded to any of Daniels' positions regarding the Secretary's authority to govern agency employees, division of work and necessity to establish practice. Pet. App. 8.

The district court accepted the United States' construction of the relevant statutes to the effect that 26 U.S.C. §§ 6103, 7213 and 7431 do not *categorically prohibit intra-IRS disclosures of a person's tax return* information. The government argued that OPR actions were within the authority for tax administration as broadly defined in 26 U.S.C. § 6103(b) and the court accepted that, as well. The district court then referenced 26 U.S.C. § 6103(h)(1) which permitted disclosure where *official duties require such inspection*.

In accepting the government's statutory construction, the district court failed to recognize the Secretary's statutory authority at 5 U.S.C. §§ 301 and 500; 31 U.S.C. § 330 to control its business, divide the duties and segregate authorities to investigate among the functions. The separation of the functions within the agency restricted intra-agency disclosures to those whose official functional duties generate a need to know on a case-by-case basis. Pet. App. 32, 35. While the IRS has absolute authority to administer the tax law, the

Secretary has restricted access/disclosure to actual cases assigned based on the function of the employee and OPR' employees need to know, material interest and official duties which do not arise absent a power of attorney, intent to represent and presented credentials.

The district court held that because 26 U.S.C. §§ 6103, 7213 and 7431 do not explicitly require the IRS/OPR to determine that a person has practiced before the IRS prior to disclosing the person's tax return information to other Treasury Department Officials, no violations had occurred. The District Court rebuked Daniels' reliance on the regulatory authority of the OPR as limited by the delegation from the Secretary of Treasury to administer the rules and regulations only for actual practice before the IRS saying neither the court nor Ms. Daniels has identified any basis for finding such a requirement to be implicit in the statutory language and that *the* same may be said of the provisions of Circular 230, 26 C.F.R. §§ 601.501-509 and IRM §§ 1.11.2.1 and 8.10.1.1.3.2(1). Pet. App. 11-12.

The district court and government ignored Congress' authority to hold all IRS' employees accountable to the instruction, protocol, procedure and delegations contained in Public Law 105-206 Sec. 1203 published as a Note under 26 U.S.C. § 7804 and published in the Internal Revenue Manual provisions.

The district court then:

a) dismissed Daniels complaint in totality pursuant to Fed. R. Civ. P. 12(b)(6) for

failure to state a claim upon which relief can be granted; Pet. App. 10-14;

b) denied Daniels' motions saying "[a]s all the claims in this action have been dismissed, Ms. Daniels' Motions to Compel, for Sanctions, for In Camera Review, and for Order are "DENIED AS MOOT"; Pet. App. 12; and

c) granted the government's Motion for Summary Judgement. Pet. App. 13-14.

The district court literally granted summary judgment where there was no complaint.

Daniels appealed to the Eleventh Circuit which, in an unpublished decision, lacking any findings of facts or conclusions of law, simply affirmed the district court's ruling. Pet. App. 1-2. Daniels sought a rehearing en banc which was denied as well. Pet. App. 16-17.

REASONS FOR GRANTING THE WRIT

I. The Eleventh Circuit's Decision That The Standards Of Conduct By Professionals Practicing Before The Internal Revenue Service Should Apply To Professionals Who Have Never Practiced Before The Internal Revenue Service Is Contrary To Federal Statutory And Federal Regulatory Law And The IRS' Internal Revenue Manual.

The Eleventh Circuit did not issue any findings and facts explaining their affirmation of the district

court's decision. This failure compels Daniels to rely on and evaluate the decision and its effects solely on the explanation written by the district court.

The Eleventh Circuit affirmed the district court's statutory construction of 26 U.S.C. §§ 6103, 7431, 7213, Circular 230, 26 C.F.R. §§ 601.501-509, IRM 1.11.2.1 and IRM 8.10.1.1.3.2(1) as neither explicitly nor implicitly requiring the enforcement branch of the IRS, the OPR, to determine that a person has practiced before the IRS prior to disclosing the person's tax information to other Treasury Department officials, thereby denying all of the Secretary's policies, rules and authority.

The district courts' interpretation of relevant statutes and regulations effectively eliminates the requirements for a need to know, eliminates the necessity of demonstrating a material interest, and eliminates the requirement that such inspection be limited to only those whose official duties require such inspection by or disclosure to others. Accordingly, the court has sanctioned an important federal question in a way that is so far departed from the accepted and usual course of statutory construction as to call for this Court's supervisory power.

Daniels has found no adjudicated case directly on point and believes, in good faith, this specific ruling to be a matter of first impression and of momentous national concern. Daniels knows this decision, though unpublished, to be a source for possible continued and future abuse by the agency.

The government attorneys misrepresented the intra-agency disclosure policy of the Secretary of Treasury by literally denying the need to know by function policy clearly stated in the Internal Revenue Manual. They also misrepresented the concept of Daniels' eligibility as an on-going issue while knowing all the while that without having filed a power of attorney or some other intent to represent before the IRS, Daniels' *eligibility*, which exists by virtue of her being a licensed attorney, was not at issue but what was at issue was that OPR lacked authority over her *because she had never practiced before the IRS.*

The district court's interpretation and statutory construction of 26 U.S.C. § 6103 ignored the Congressional grant of authority to the Heads of the Departments comprising the executive branch whose duty it is to write the rules, regulations and policies for their agencies. Pet. App. 11-12. The district court ruling challenges the Secretary's policy, rule and regulatory authorities, creates controversy over every decision regarding privacy, disclosure and policy, rule, rule making and regulatory powers of every chief executive officer in the United States executive branch.

The district court's statutory interpretation of 26 U.S.C. § 6103 essentially gives OPR carte blanche authority to expand itself to delving into the private affairs of every attorney, certified public account, actuary and appraiser, whether or not practicing before the IRS by employing the guise of *potential eligibility* as its rationale. Since OPR routinely takes their findings to the state control boards over such

licensed individuals they then possess the ability to hold those licenses hostage over ordinary mistakes on returns, guilt by association, voicing politically incorrect opinions or just because someone doesn't like them.

This ruling leaves everyone in doubt as to the actual authority of each function separation of duties and the written/published policy of the Secretary of Treasury. It challenges the ability of the Secretary of Treasury to control the business of the agency and compel adherence by its employees to the policies, rules and regulations made for that purpose. That is the reason Daniels, in addition to filing her 26 U.S.C. § 7431 claim, filed a 28 U.S.C. § 2201 and F.R.C.P. 57 Declaratory action asking the court to declare that 26 U.S.C. § 6103 disclosure provisions protected Daniels and other like situated attorneys from harassment from an agency which has no business knowing anything about the attorney. But the court has declared loud and clear that 26 U.S.C. §§ 6103, 7431 and 7213 along with Circular 230 and 26 C.F.R. Part 601.501-502 – Conference and Practice Requirement and certain IRM provisions permit access and disclosure of confidential return and return information by agents that have no authority over Daniels and absolutely no need to know anything about her until and unless she subjects herself to the authority of the OPR by representing taxpayers before the IRS.

And what does this portend for other agencies? It should strike fear in the hearts of judges. Since Judge Martin has statutorily construed very clear statutes

and regulations in contradistinction to settled law and ways never intended, what else will follow? The court's ruling, providing access to otherwise protected information, as it did in this case, permits government attorneys to seek expansive powers while simultaneously eliminating the controls placed by Congress in its enacted statutory law.

This ruling also denies all privacy rights and statutory remedy which should have been available to Daniels.

According to public policy, rules and regulations published by the Secretary, Daniels, not having practiced before the IRS, did not fall within the sphere of attorneys who, by virtue of their having practiced before the IRS, fell under the authority and indeed, the scrutiny of the OPR. Daniels never denied general the tax administration authority of the IRS; her only challenge was to the OPR's 'need to know' within its assigned delegated duties and pursuant to 26 U.S.C. § 6103(h)(1), 26 U.S.C. § 6103(d)(6), 31 U.S.C. § 330, 31 C.F.R. Part 10, 26 C.F.R. Part 601, along with all Internal Revenue Policy provisions as noted in the Appendix attached hereto.

Further, 31 U.S.C. § 330(a)(1) states "Subject to section 500 of title 5, the Secretary of the Treasury may (1) regulate the *practice of representatives of persons before the Department of the Treasury*; Circular 230's title states that they are "Regulations Governing the Practice of Attorneys, Certified Public

Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service.

10.1 – Director of Practice (b) Duties. The Director of Practice acts on applications . . . before the Internal Revenue Service; makes inquiries with respect to matters under his or her jurisdiction.

10.3 – Who May Practice (a) Attorneys. Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as an attorney and is authorized to represent the party or parties on whose behalf he or she acts.

I don't see how it can get any more clear than this.

II. The Eleventh Circuit's Decision That Summary Judgment Was Proper When The Federal District Court Had Already Dismissed Daniels' Pleadings In Entirety Pursuant To F.R.C.P. 12(b)(6), Was In Error

The district court further erred in granting the government's Motion for Summary Judgment where the entire Complaint had already been dismissed for failure to state a claim upon which relief could be granted. The district court clearly and unequivocally stated that the dismissal of the Daniels' Complaint rendered her motions before the court to compel

discovery, for sanctions, et al., as moot. A summary judgment is rendered where there are no material facts at issue and the moving party is entitled to the decision as a matter of law. When the district court dismissed Daniels' Complaint under F.R.C.P. 12(b)(6), it determined that Daniels had no remedy under the law. The government's motion for summary judgment sought remedy/relief from the complaint; it had no other purpose; it was not independent of the complaint. Like Daniels' discovery motions, the summary judgment motion was, according to ordinary practice and understanding of the rules and decisions, rendered moot upon dismissal of the complaint.

The district court, assuming arguendo that the law and facts supported its grant of summary judgment for the government, could have simply granted the summary judgment which would have determined the issue on the basis of the law applied to the facts argued by Daniels and refuted by IRS. The district court did not do that. Rather, it provided the "Legal Standards for Summary Judgment" at Pet. App. 7-12 of its Order without granting the motion for summary judgment in that same discussion.

Had the district court granted summary judgment for the government there would have been no need to dismiss Daniels' complaint for F.R.C.P. 12(b)(6). The district court went to some length explaining its decision to dismiss the complaint under F.R.C.P. 12(b)(6) and actually did so within that portion of its findings and Order. Accordingly, a complaint cannot be dismissed in its entirety for

failing to state a claim upon which relief can be granted and then turn its hat around and be the source for a Summary Judgment. The court can do one or the other but not both. Daniels does not deny that complaints can be partially dismissed or summary judgment granted as to specific claims, but these exceptions are not found in the instant district courts' decision.

Petitioner also had every right to expect that the Eleventh Circuit would address this question rather than ignore it. This Court should act to assure that important rights are not lost not only by private individuals such as Daniels but nationwide as a result of the unfortunate action of the court of appeals.

Certiorari jurisdiction is warranted to correct this error and reaffirm existing law.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

KAREN K. DANIELS, Pro Se, Petitioner
778 Mulberry Street
Macon, Georgia 31201
(478) 741-3000

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-13379

D. C. Docket No. 05-00925-CV-BBM-1

KAREN K. DANIELS

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(October 15, 2007)

Before CARNES and BARKETT, Circuit Judges, and COHN,* District Judge.

PER CURIAM:

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* Honorable James I. Cohn, United States District Judge for the Southern District of Florida, sitting by designation.

We find no reversible error in the district court's order granting summary judgment in favor of the government in this case.

AFFIRMED.

APPENDIX B

United States Court of Appeals

For the Eleventh Circuit

No. 06-13379

District Court Docket No.
05-00925-CV-BBM-1

KAREN K. DANIELS

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: October 15, 2007
For the Court: Thomas K. Kahn, Clerk
By: Jackson, Jarvis

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KAREN K. DANIELS, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	CIVIL ACTION FILE NO. 1:05-CV-0925-BBM

ORDER

This *pro se* action is before the court on the Motion for Summary Judgment of Defendant United States of America [Doc. No. 16] and Plaintiff's Motions which have been characterized as (1) the Motion to Compel; (2) the Motion for Sanctions; (3) the Motion for In Camera Review; and (4) the Motion for Order (collectively, the "Motion to Compel") [Doc. No. 19].

I. Factual and Procedural Background

Plaintiff Karen K. Daniels ("Ms. Daniels") is an attorney who is licensed to practice law in the State of Georgia. On February 15, 2002, an Internal Revenue Service ("IRS") agent in Florida referred Ms. Daniel to the IRS Office of Professional Responsibility (the "IRS/OPR") f/k/a the IRS Director of Practice

Office.[1] The referral letter alleged that Ms. Daniels was a participant in an abusive tax scheme. The United States claims that "[i]ndividuals who are eligible to practice before the IRS may lose that eligibility for several reasons, including failure to properly file their own tax return(s) and/or failure to properly and fully pay their own taxes." (Shatz Decl. ¶ 4, Feb. 1, 2006.) As a result of the referral letter, the IRS/OPR opened an investigation into whether Ms. Daniels had improperly practiced before the IRS. IRS/OPR employees contacted other IRS employees to gather information about Ms. Daniels's tax filing and payment status and whether she had engaged in any act that qualified or may have qualified as practice before the IRS. During the investigation, IRS/OPR employees disclosed Ms. Daniels's tax return information to other IRS employees.

On April 6, 2005, Ms. Daniels filed a Complaint, which the court understands to make two distinct claims: The first claim (the "Conferral Claim"), asserts

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[1] Ms. Daniels has objected to each of the six facts the United States has set forth in its Statement of Material Facts. Ms. Daniels asserts that these facts are inadmissible, irrelevant, and immaterial because they do not establish a defense to one of the two claims she has set forth in her Complaint. (*See* Pl.'s Resp. to Def.'s Statement of Material Facts ¶¶ 1-6.) Under the Local Rules of this court, Ms. Daniels's responses do not state valid objections to the United States' statements of fact. *See* L.R. 56.1B.(2)a.(1)-(2), N.D. Ga. Furthermore, the court notes that Ms. Daniels has failed to provide her own statement of material facts as required by this court's rules governing Summary Judgment motions. *See* L.R. 56.1B.(2)b., N.D. Ga.

that various confidentiality provisions of the Internal Revenue Code – namely, I.R.C. §§ 6103 ("Section 6103"), 7431 ("Section 7431"), and 7213 ("Section 7213") – categorically prohibit the IRS/OPR from disclosing a person's tax return or return information to other IRS employees, and that, in disclosing Ms. Daniels's tax return information to such officials, the IRS/OPR violated that prohibition. The second claim (the "Investigation Claim"), which Ms. Daniels offers in the alternative, asserts that the IRS/OPR may share a person's tax return information with certain other IRS employees only after determining that the person has in fact practiced before the IRS. The court understands Ms. Daniels to base her Investigation Claim on: (1) the same statutory provisions underlying her Conferral Claim; (2) Treasury Department Circular No. 230 ("Circular 230"), 31 C.F.R. § 10, *et seq.*, (3) regulations promulgated by the Secretary of the Treasury governing legal practice before the IRS, particularly 26 C.F.R. §§ 601.501-509; and (4) provisions of the Internal Revenue Manual ("IRM"), particularly IRM §§ 1.11.2.1 and 8.10.1.1.3.2(1).[2] Ms. Daniels further claims that she has never practiced before the IRS, and that the IRS/OPR never uncovered any evidence that she has ever practiced before it.

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[2] In determining the sources of law Ms. Daniels relies on for purposes of both her Conferral and Investigation Claims, the court has referenced Ms. Daniels's Complaint as well as her Motion Asking the Court to Deny Defendant's Motion for Summary Judgment.

Discovery in this action ended on January 15, 2006. (*See* Nov. 10, 2005 Order 1.) On February 6, 2006, the United States filed a Motion for Summary Judgment. On February 22, 2006, Ms. Daniels filed the Motion to Compel. Therein, Ms. Daniels seeks: (1) to compel the United States to respond to various discovery requests; (2) sanctions for the alleged failure of the Unites States to respond to these requests; (3) an *in camera* inspection of fifty-six pages of documents that the United States claims are privileged or otherwise protected from discovery; and (4) an Order deeming her requests for admissions to be admitted for failure to respond.

II. Summary Judgment Legal Standard

Summary judgment is proper under Federal Rule of Civil Procedure 56 "if . . . there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In considering a motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. . . ." *Id.* However, the non-movant must do more than "simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "The mere existence of a

scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant]." *Anderson*, 477 U.S. at 252. Accordingly, the non-movant may not avoid summary judgment with evidence that is "merely colorable or is not significantly probative." *Raney v. Vinson Guard Serv., Inc.*, 120 F.3d 1192, 1196 (11th Cir. 1997). "Thus, to survive a motion for summary judgment, the nonmoving party must come forward with specific evidence of *every* element material to that party's case so as to create a genuine issue for trial." *Johnson v. Morehouse Coll., Inc.*, 199 F. Supp. 2d 1345, 1352 (N.D. Ga. 2002) (Carnes, J.).

III. Analysis

In its Motion for Summary Judgment, the United States asserts that as a matter of statutory construction Sections 6103, 7431, and 7213 do not categorically prohibit intra-IRS disclosures of a person's tax return information and that, accordingly, Ms. Daniels's Conferral Claim does not state a proper grounds for relief. Ms. Daniels's pleadings do not address the United States' construction of the relevant statutes.

Section 7431 provides in pertinent part:

> If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in

> violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

I.R.C. § 7431(a)(1); *cf.* I.R.C. § 7213(a)(1) (providing criminal penalties for unlawful disclosure of a person's return or return information).[3] Section 6103, in turn, "lays down a general rule that 'returns' and 'return information' as defined therein shall be

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[3] Section 6103 defines the term "return" to mean:

> any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

I.R.C. § 6103(b)(1). Section 6103 defines the term "return information" to mean, in part:

> a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

I.R.C. § 6103(b)(2)(A).

confidential." *Church of Scientology of Ca. v. I.R.S.*, 484 U.S. 9, 10 (1987). Section 6103(h)(1), however, provides an exception to that general confidentiality rule:

> Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.

I.R.C. § 6103(h)(1). The statute defines "tax administration" to mean:

> (i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and
>
> (ii) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and
>
> (B) [the] assessment, collection, enforcement, litigation, publication and statistical gathering functions under such laws, statutes, or conventions.

I.R.C. § 6103(b)(4)(A)(i)-(ii) & (B).

Ms. Daniels has not alleged that the IRS/OPR's investigation of her did not constitute "tax administration" within the broad meaning of that term

specified in Section 6103(b)(4). Ms. Daniels has also not alleged that any IRS officer or employee disclosed her tax return information to a person who was not an officer or employee of the Department of the Treasury or that any disclosure was made to such officers or employees whose official duties did *not* require such disclosure. *See* I.R.C. § 6103(h)(1). Ms. Daniels's Conferral Claim must therefore be DISMISSED. *See* Fed. R. Civ. P. 12(b)(6) (empowering the court to dismiss a claim for "failure to state a claim upon which relief can be granted.").

The United States has not directly responded to Ms. Daniels's Investigation Claim. As indicated by the court's analysis of Ms. Daniels's Conferral Claim, however, Sections 7431, 6103, and 7213 do not explicitly require that the IRS/OPR determine that a person has practiced before the IRS prior to disclosing the person's tax return information to other Treasury Department officials. Furthermore, neither the court nor Ms. Daniels has identified any basis for finding such a requirement to be implicit in the statutory language. The same may be said of the provisions of Circular 230,[4] 26 C.F.R.

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[4] Ms. Daniels claims that the Secretary of the Treasury has promulgated regulations governing the practice of attorneys with Circular 230 and that, subject to 5 U.S.C. § 500(b), a person who practices before the Treasury Department must fulfill certain requirements, such as being a member in good standing of the bar of the highest court of a state. (*See* Br. in Supp. of Pl.'s Mot. Asking the Ct. to Deny Def.'s Mot. 3.) Ms. Daniels, however, has not cited to a specific provision of Circular 230 – nor

(Continued on following page)

§§ 601.501-509,[5] and IRM §§ 1.11.2.1 and 8.10.1.1.3.2(1), all of which Ms. Daniels has cited in support of her Investigation Claim.[6] Ms. Daniels's Investigation Claim therefore must also be DISMISSED. *See* Fed. R. Civ. P. 12(b)(6).

IV. The Motion to Compel

As all the claims in this action have been dismissed, Ms. Daniels's Motions to Compel; for Sanctions; for In Camera Review; and for Order [Doc. No. 19] are DENIED AS MOOT.

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has the court identified one – regulating the sort of intra-IRS communications at issue in this action.

[5] 26 C.F.R. §§ 601.501-509 govern, among other things, "the representation of taxpayers before the Internal Revenue Service under the authority of a power of attorney." 26 C.F.R. § 601.501(a). Again, Ms. Daniels has pointed to no provision – and the court could not identify one – regulating the sort of intra-IRS communications at issue in this action.

[6] IRM § 1.11.2.1 specifies, in several subsections, its own authoritativeness as a "single, official source of IRS instructions to staff." IRM § 1.11.2.1(3) (internal quotations omitted). IRM § 8.10.1.1.3.2, on the other hand, implicates the requirement that "Internal Revenue Service employees . . . make a written report to the Director of Practice when the employee has reason to believe that an attorney . . . has violated the rules set forth in . . . Circular [230]." IRM § 8.10.1.1.3.2(1). Again, neither IRM provision explicitly limits the sort of intra-IRS communications at issue in this action, and Ms. Daniels has not argued that any such limitation may be implicit in the statutory language. *See Tavano v. Comm'r*, 986 F.2d 1389, 1390 (11th Cir. 1993) (citing *United States v. Horne*, 714 F.2d 206, 207 (1st Cir. 1983) for the proposition that the IRM's provisions are not mandatory).

V. Summary

The Motion for Summary Judgment of the United States [Doc. No. 16] is GRANTED. Plaintiff's Motions which have been characterized as (1) the Motion to Compel; (2) the Motion for Sanctions; (3) the Motion for In Camera Review; and (4) the Motion for Order [Doc. No. 19] are DENIED AS MOOT.

IT IS SO ORDERED, this 11th day of April, 2006.

s/ Beverly B. Martin
BEVERLY B. MARTIN
UNITED STATES
DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KAREN K. DANIELS, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	CIVIL ACTION FILE NO. 1:05-cv-0925-BBM

JUDGMENT

This action having come before the court, Honorable Beverly B. Martin, United States District Judge, for consideration of Defendant's Motion for Summary Judgment, and the court having granted said motion, it is

Ordered and Adjudged that the Plaintiff take nothing; that the Defendant recover its costs of this action, and the action be, and the same hereby, is dismissed. Dated at Atlanta, Georgia, this 11th day of April, 2006.

LUTHER D. THOMAS
CLERK OF COURT

By: s/ Pamela Wright
Deputy Clerk

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-13379-II
Non-Argument Calendar

KAREN K. DANIELS,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(Filed Jan. 22, 2007)

ORDER:

Appellant's motion to supplement the record on appeal is DENIED.

/s/ [Illegible]
CHIEF JUDGE

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-13379-HH

KAREN K. DANIELS,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Georgia

(Filed Jan. 14, 2008)

Before: CARNES and BARKETT, Circuit Judges, and COHN*, District Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en

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* Honorable James I. Cohn, United States District Judge for the Southern District of Florida, sitting by designation.

banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ [Illegible] Barkett
UNITED STATES CIRCUIT
JUDGE

APPENDIX G

STATUTES

23 STAT. 258 (Act July 7, 1884, c. 334, §3) (Public Law 105-206 Sec. 1203(c)(b)) Rules for government of agents, attorneys, etc., representing claimants before Department; suspension or disbarment.

"The Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such Secretary may after due notice and opportunity for hearing suspend, and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement (23 STAT. 258)

Public Law 105-206 SEC. 1203. TERMINATION OF EMPLOYMENT FOR <<NOTE: 26 USC 7804 note.>> MISCONDUCT.

(a) In General. – Subject to subsection (c), the Commissioner of Internal Revenue shall terminate the employment of any [[Page 112 STAT. 721]] employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

(b) Acts or Omissions. – The acts or omissions referred to under subsection (a) are –

> . . . (6) violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service; . . .

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5 U.S.C. §301 Departmental regulations

The head of an Executive department . . may prescribe regulations for the government of his department, the conduct of its employees, the distribution

and performance of its business, and the custody, use, and preservation of its records, papers, and property . . .

* * *

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5 U.S.C. §500. Administrative practice; general provisions

(b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration, that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

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26 U.S.C. §6103(b)(4)(A) and (B), (b)(7), (b)(8), (h)(1) and (k)(6)

* * *

(b)(4) The term "tax administration" – (A) means – (i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws . . . , and

(B) includes assessment, collection, *enforcement*, litigation, publication and statistical gathering functions under such laws, statutes, or conventions."

* * *

(b)(7) Inspection The terms "inspected" and "inspection" mean any examination of a return or return information.

(b)(8) Disclosure The term "disclosure" means the making known to any person in any manner whatever a return or return information.

* * *

(h) Disclosure to certain Federal officers and employees for purposes of tax administration, etc. (1) Department of the Treasury Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.

* * *

(k)(6) Disclosure by certain officers and employees for investigative purposes An internal revenue officer or employee and . . . may, in connection with his official duties relating to any. . offense under the internal revenue laws, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available . . . or with respect to the enforcement of any other provision of this title.

31 U.S.C. §330 Practice before the Department

(a) Subject to section 500 of title 5, the Secretary of the Treasury may –

(1) regulate the practice of representative of persons before the Department of the Treasury . . .

APPENDIX H

REGULATIONS

26 C.F.R. §§ 601.501-509 practice before the IRS

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31 C.F.R. part 10 Practice Before The Internal Revenue Service

"Authority: Sec. 3, 23 Stat. 258, secs 2-12, 60 Stat. 237 et seq.; 5 U.S.C. 301, 500, 551-559; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 STAT. 1280, 3 CFR, 1949-1953 Comp., p. 1017

SOURCE: Department Circular 230, Revised, 31 FR 10778, Aug. 13, 1966, unless otherwise noted."

31 C.F.R. §10.0 Scope of part. This part contains rules governing the recognition of attorneys, . . representing clients before the Internal Revenue Service. Subpart A . . sets forth rules relating to authority to practice . . . ; subpart B . . prescribes the duties and restrictions relating to such practice . . .

* * *

31 C.F.R. §10.3 Who may practice. (a) Attorneys . . . may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as an attorney and is authorized to represent the party or parties on whose behalf he or she acts.

31 CFR part 10 is published as *Circular 230* practice before the Department of Treasury

APPENDIX I

Internal Revenue Manual (IRM)

1. **Internal Revenue Manual**

Table of Contents

Part 1	Administration
Part 3	Submission Processing
Part 4	Examining Process
Part 5	Collecting Process
Part 6	Human Resources Management
Part 7	Rulings and Agreements
Part 8	Appeals
Part 9	Criminal Investigation
Part 11	Communications and Liaison
Part 13	Taxpayer Advocate Service
Part 20	Penalty and Interest
Part 21	Customer Account Services
Part 22	Taxpayer Education and Assistance
Part 25	Special Topics
Part 30	Administrative
Part 31	Criminal Tax
Part 32	Disclosure Litigation
Part 33	General Legal Services
Part 34	General Litigation
Part 35	Tax Litigation
Part 39	Technical
Part 42	International

* * *

INTERNAL REVENUE MANUAL (POLICY)

Internal Revenue Manual (IRM) Table of Content

Identifies components of the Internal Revenue Service and provides access to the published policy, instructions and references to resources for staff.

IRM §1.1.1.1 The IRS Mission

The mission of the IRS is to "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all."

IRM §1.1.1.2 Statutory Authority

The IRS is organized to carry out the responsibilities of the secretary of the Treasury under IRC § 7801. The Secretary has full authority to administer and enforce the internal revenue laws and has the power to create an agency to enforce these laws. The IRS was created based on this legislative grant. IRC § 7803 provides for the appointment of a Commissioner of Internal Revenue to administer and supervise the execution and application of the internal revenue laws.

IRM §1.1.20.1(1)(A), (B), (F);

(1)The Office of Professional Responsibility (OPR) administers the laws and regulations governing the

practice of attorneys, certified public accounts, enrolled agents, enrolled actuaries and appraisers who represent taxpayers before the Department of Treasury and the Internal Revenue Service (31 U.S.C. 330; 31 C.F.R., Part 10). The OPR:

(A) Reviews/investigates evidence of alleged misconduct by tax professionals (attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers) who represent taxpayers before the Service.

(B) Initiates disciplinary proceedings for tax professionals (attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers) who represent taxpayers before the Service.

(F) Interprets the Conference and Practice Requirements contained in 26 C.F.R. Part 601, Subpart E.

IRM §1.1.20.2(3)(B), (D), (G) and (H)

(3) The mission of the Office of Professional Responsibility is to foster excellence in tax professional services to taxpayers by setting, communicating, and enforcing standards of competence, integrity and conduct. To accomplish the mission, the Director:

(B) Defines and communicates key OPR performance goals.

(D) Develops clear standards in licensing, discipline, and other program areas.

(G) Builds OPR management staff as leadership team.

(H) Directs the implementation of office procedures

IRM §1.1.20.2.1(2)(A)(G), (H);

2. The mission of the Case Development and Licensor Branch is to develop, review and evaluate incoming referrals, correspondence and complaints and to ensure the basic competence and integrity of enrolled agents through licensing and continuing professional education. To accomplish its mission, the Chief, Case Development and Licensure Branch;

(A) Engages in proactive liaison with state licensing authorities including state boards of accountancy and state bars to seek and obtain state disciplinary actions that have Treasury Department Circular 230 implications.

(G) Monitors Servicewide enforcement activities and/or parallel investigations and coordinates OPR's involvement in those cases involving Circular 230 practitioners.

(H) Refers cases to Enforcement and Oversight Board following the development of preliminary leads of potential Circular 230 violations.

IRM §1.1.20.2.2(2)(A),(B);

2. The mission of the Enforcement and Oversight Branch I is to review, investigate, and effectively sanction violators of professional standards of competence, conduct and integrity by tax professionals (attorneys, certified public accountants and enrolled

agents) who represent taxpayers before the Service. To accomplish this mission, the Chief:

(A) Institutes proceedings for discipline of tax professionals subject to OPR's jurisdiction for violating provisions of the law or regulations governing practice before the IRS.

(B) Issues sanctions (reprimands, alternative settlements, censures, voluntary suspensions, suspensions and disbarments) for tax professionals who have been determined to be in violation of the law or regulations governing practice before the IRS.

IRM §1.1.20.4 Resources

(1) OPR Website http://nhq.no.irs.gov/OPR/.

(2) Treasury Department Circular 230, Title 31 Code of Federal Regulations, Subtitle A, Part 10, revised as of June 20, 2005.

(3) Title 26 Code of Federal Regulations, Part 601, Subpart E.

(4) Title 29 United States Code Section 1242.

(5) Section 3041 of the Employee Retirement Income Security Act of 1974 (ERISA).

(6) Revenue Procedure 81.38.

IRM §1.1.20.5. Procedures

(1) Reporting Practitioner Misconduct – Referrals should be made to OPR as soon as it appears that a practitioner may be in violation of Circular 230.

Circular 230, Section 10.53(a) specifies, "If an officer or employee of the Internal Revenue Service has reason to believe that a practitioner has violated any provision of this part, the officer or employee will promptly make a written report to the Office of Professional Responsibility of the suspected violation." Since the Area Return Preparer Coordinator (RPC) may be aware of other information regarding the subject of the referral, it is recommended that a copy of the referral be provided to the Area ROC . . .

IRM §1.2.10.1.1 Policy Statement 1-1

(1) Mission of the Service

(3) Tax matters will be handled in a manner that will promote public confidence.

(5) Taxpayer privacy will be safeguarded in the acquisition and use of information.

(7) Taxpayer Privacy Rights

(8) The IRS is fully committed to protecting the privacy rights of all taxpayers. Many of these rights are stated in law. However, the Service recognizes that compliance with legal requirements alone is not enough. . . .

(9) Among the most basic of a taxpayer's privacy rights is an expectation that the Service will keep personal and financial information confidential. Taxpayers also have the right to expect that the Service will collect, maintain, use and disseminate personally identifiable information and data only as

authorized by law and as necessary to carry out agency responsibilities.

(10) . . . IRS employees will perform their duties in a manner that will recognize and enhance individuals' right of privacy and will ensure that their activities are consistent with law, regulations, and good administrative practice . . .

IRM §1.11.2.1 What Belongs in the IRM

1. The IRM serves as the single, official source of IRS "instructions to staff" relating to the administration and operation of the Service. The IRM provides a central repository of uniform guidelines on operating policies and procedures for use by all IRS offices. It contains guidance on IRS policies and directions our employees need to carry out their responsibilities in administering the tax laws or other agency obligations.

Note:

See IRM 1.11.1.7, *Internal Management Documents, Interim Guidance*, for details on instructions to staff.

1. To ensure the IRM is the "single source," the IRM must contain all instructions to staff that employees need to conduct business. Specifically, instructions to staff contained in job aids, desk guides, web sites, documents, or any other sources must be incorporated into the IRM. Delivery of accurate content to our employees is critical to consistent administration of the tax laws.

2. The IRM Decision Tool is an "interactive" flowchart to help determine if the information is "instructions to staff" and should be incorporated into the IRM. Selecting certain choices that apply to the information in question will help the user decide. The tool supports the "IRM as a single source" concept and promotes consistency in our instructions to staff. See "The IRM Decision Tool" at http://spder.web.irs.gov/irm/decide/.

IRM §1.16.13.3.2 (07-01-2003) Handling

(1) The handling of tax and tax-related documents must be in such a manner that they do not become misplaced or available to unauthorized personnel. Only those employees who have a need to know will be permitted access to tax and tax-related information. Tax information will not be released outside the Service except as provided in the Internal Revenue Code.

IRM §1.25.1.1

(2) "The Office of Professional Responsibility (OPR) is responsible for communicating and enforcing standards of competence, integrity, and conduct among those who represent taxpayers before the IRS, e.g. . .

A. Attorneys

B. Certified public accountants

C. Enrolled agents

D. Enrolled actuaries

E. Appraisers

IRM §5.1.1.7.6.2 Preparation of Form 8484, Report of Suspected Practitioner

Misconduct identifies each of the requirements as listed below in IRM §5.8.10.8.4

IRM § 5.8.10.8.4 (09-01-2005)

Preparation of Form 8484, Report of Suspected Practitioner Misconduct and Report of Appraiser Penalty to the Office of Professional Responsibility (OPR)

1. Part A – Practitioner Information

Practitioner information must include the practitioner's name, mailing address, telephone number, fax number, social security number, and CAF number. Indicate whether the practitioner is an attorney, certified public accountant, enrolled agent, or enrolled actuary.

2. Part B – Evidence of Practice before the IRS

If available, attach a copy of the Form 2848, Power of Attorney and Declaration of Representative, or an IDRS CAF printout to the Form 8484. If neither a copy of the Form 2848 nor a CAF printout is available, but the employee has personal knowledge of the practice, provide the following statement, "I dealt with this practitioner during (year) regarding a collection matter. The Form 2848 was not put on the CAF and I do not have access to the closed case file." The Office of Professional Responsibility (OPR) must be able to accurately identify and locate the tax practitioner in order to process the referral and

establish proof of practice before the Internal Revenue Service.

3. Part C – Explanation of Suspected Misconduct

Complete and attach a narrative to the Form 8484. The narrative should be detailed enough to allow the Office of Professional Responsibility (OPR) to give the practitioner fair notice of the suspected misconduct. It should list all significant events that illustrate the inappropriate conduct in chronological order, explain how the conduct impacts on the administration of the tax laws, as well as any other supporting information that will establish a pattern of abuse. It should include appropriate quotations from the case history that would support the alleged misconduct. If applicable, hand-written material should be transcribed. The narrative should be specific and should include: who, what, when, where, and why.

4. Part D – Contact Person and Address

The contact person is not necessarily the person with first-hand knowledge of the suspected misconduct. Rather, the contact person may be an Area employee responsible for collecting misconduct reports and submitting them to the Office of Professional Responsibility (OPR). The OPR will direct questions concerning the referral to the contact person.

5. Part E – Management Approval

While the Office of Professional Responsibility does not require any particular level of management approval, referrals made by Offer in Compromise

(OIC) employees should be reviewed and approved by field Group Managers or Offer Examiner Unit Managers (COIC) before documents are sent to the OPR.

6. Part F – Office of Professional Responsibility (OPR) Acknowledgement of Report Upon receiving the Form 8484 and the corresponding narrative, the OPR will complete Part F and return a copy to the contact person.

IRM §8.6.1.1.2.2 with IRM §Exhibit 8.6.1-1; IRM §8.6.1.1.2.3. explain how an attorney notifies the IRS of practice.

IRM §8.10.1.1.3.2(1) provides the procedure for referral to OPR. The referral procedure does not authorize anyone outside OPR to validate whether or not the individual being referred is actually practicing.

IRM §11.3.22.4.1 Access by IRS Employees Based on "Need to Know"

1. The duties performed by IRS employees generally involve tax administration. However, IRS personnel should not have unlimited access to returns and return information.

2. IRS employees may access returns and return information only when there is a "need to know" the information for their tax administration duties. This is important in maintaining the confidentiality of information in the custody of the IRS.

3. The IRS decides on a case by case basis whether an employee has a need to know. IRS employees must follow established procedures and not access tax accounts pertaining to relatives or other prohibited entities. See IRS's Unauthorized Access (UNAX) materials.

4. Before disclosing returns or return information to other IRS personnel, employees should satisfy themselves that the proposed recipient has an official tax administration need for the information. A manager or Disclosure employee should be consulted if there is any question whether disclosures are proper.

5. IRS employees are not prohibited from disclosing return information to seek advice about legal, technical, or procedural issues in a specific case: for example, when employees consider similar issues about unrelated taxpayers. The disclosures may be between individual employees, or between offices such as in industry-wide examinations under the Coordinated Examination Program. However, a "need to know" must be established on a case by case basis. Universal access by an IRS function's employees to tax files would generally fail the need to know requirement.

IRM §11.3.38.6 Reporting Unauthorized Accesses or Disclosures

1. IRS employees are required to report suspected willful unauthorized inspections/disclosures of returns and return information and Privacy Act violations to the Treasury Inspector General for Tax Administration (TIGTA). Field employees

should report these matters to the local TIGTA Special Agent. Washington, DC metro area employees should report to TIGTA's main office. Non-willful unauthorized disclosures of tax or Privacy Act protected information are to be reported in accordance with IRM 11.3.13.38.6.1..

IRM §11.3.38.6.1 Report of inadvertent improper disclosures

1. Inadvertent improper disclosures, while still unauthorized, are those disclosures where no willfulness of intent is involved . . .

IRM §21.3.10.8 Reporting Practitioner Misconduct

6. Once the information is determined credible, prepare and send a written report (Form 8484, Report of Suspected Practitioner Misconduct) to the OPR. *See IRM 21.3.10.8.(4), Reporting Practitioner Misconduct*, for the OPR address.

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Karen K. Daniels,
Petitioner/Plaintiff,

v.

United States of America.
Respondent/Defendant.

Case No: _____

REQUEST FOR DECLARATORY JUDGMENT
28 U.S.C. §2201
F.R.C.P. Rule 57 and

COMPLAINT FOR DISCLOSURE VIOLATIONS
IRC Section 7431
IRC Section 6103
IRC Section 7213

AFFIDAVIT

State of Georgia

County of Bibb

I, Karen K. Daniels, after being placed under oath, do hereby depose and state:

1. I am legally competent and have personal knowledge of the facts and events stated herein and, under penalty of perjury, do hereby state that I am competent to testify if called upon to do so.

STATEMENTS AND PROOF OF MATERIAL FACTS

2. On or about April 11, 2003, I was served with a February 21, 2003 "PERSONAL AND CONFIDENTIAL" letter from the Office of Professional Responsibility (hereinafter OPR), regarding my eligibility to practice before the Internal Revenue Service pursuant to section 10.60 of the Treasury Department Circular No. 230 (*Exhibit A1*) Said letter was inaccurately addressed and mailed to Gainesville, Florida rather than Macon, Georgia. (*See Exhibit A2* – May 6, 2003 letter from Paul H. Chappell, Esq. addressed to Jonathan Huth, OPR).

3) A February 20, 2003 memorandum to William J. Daniel, Jr., Revenue Agent, from Patrick W. McDonough, Director of Practice and J.S. Prater, acknowledged receipt of a referral on my behalf, stating that "the information" was under review by their legal staff," (*Exhibit B*)

4) On July 28, 2003, I filed a Freedom of Information Act (hereinafter FOIA) request for the Director of Practice and District Director, IRS, to produce any and all documentation relating to its February 21, 2003 allegations and evidence establishing jurisdiction. (*Exhibit C*), Said letter was summarily ignored until one year later.

5) Between May 2003 and October 2003, six (6) letters were sent to the Director of Practice requesting confirmation of its jurisdiction over me; a due process hearing and notice of Circular 230 violation allegedly committed, (*Exhibits D1*

through D7). Said letters were also summarily ignored.

6) On July 11, 2003, I filed a FOIA request seeking production of all forms 2848 showing that I had represented persons before the Service (*Exhibit E1*).

7) The service responded on July 16, 2003 that after "a thorough search of our files . . . no records existed (*Exhibit E2*).

8) On July 19, 2004, one year following my July 28, 2003 request for its file on me, the honorable Cono Namorato, Director of the OPR, responded. (*Exhibit F*). Some records were produced but instructively, the OPR/IRS was not able to produce any forms 2848.

9) Without producing evidence establishing that it has jurisdiction to investigate me, the OPR/IRS willfully and knowingly disclosed private and confidential return information on my behalf by contacting CID agent, Mike Podolak (*Exhibit G*).

10) On or about October 13, 2004, one (1) year and eight (8) months after instituting an illegal investigation of me, officials from the OPR/IRS knowingly and willfully disclosed private return information on my behalf by contacting Karen Alibozek, IRS agent, in order to elicit her assistance in finding evidence that I had represented taxpayers before the Service (*Exhibit H*).

11) The OPR/IRS was on notice by its own agent, Ms. Alibozek, that she could find no evidence that I had represented anyone before the IRS (refer to *Exhibit H*).

12) Karen Alibozek, knowingly and willfully disclosed private, confidential return information on my behalf by contacting Monica Armstrong, IRS Counsel and revealing to her that I was under investigation by the OPR, (Refer *to Exhibit H* above).

13 On or about October 2004, Keith Ott violated IRC Sections 7431 and 7213 by willfully and knowingly disclosing private return information on my behalf to multiple individuals in the Department of Treasury in Atlanta and Washington DC (*Exhibit I*).

14) On or about October 27, 2004, Keith Ott, OPR counsel, informed me that because the Service was unable to find any evidence that I had represented taxpayers before the IRS, he was going to make a recommendation to the Chief of Enforcement, OPR, that they not proceed forward with my case.

15) From July 2004 through December 2004, the honorable Cono Namorato and Keith Ott were noticed of its failure to establish jurisdiction in this matter and of its willful disclosure violations (*Exhibits J1 through J5*).

16) Scott Rosenzweig, Director of the Peachtree Office in Atlanta, Georgia willfully and knowingly disclosed my private and confidential return information to the OPR (*Exhibit K*)

17) *Exhibit L* shows further unlawful disclosure violations by the IRS on my behalf.

18) The OPR/IRS has never granted my request for a hearing, has never delineated allegations of

wrongdoing against me and has failed to produce evidence establishing jurisdiction in this matter.

19) On or about January 22, 2005, President Bush informed me that the White House was forwarding my inquiry as to the OPR/IRS jurisdiction to the IRS (*Exhibit M*).

20) On or about January 25, 2005, one (1) year and eleven (11) months after commencement of it unlawful investigation and its consequent knowing and willful disclosure violations, the Honorable Cono Namorato closed its case against me (*Exhibit N*).

I do solemnly declare and affirm, under penalty of perjury, that to the best of my knowledge, information and belief, the information and statements set forth herein, are true and correct.

It is so stated this 5th day of April, 2005

/s/ Karen K. Daniels
Karen K. Daniels, Esq., Affiant
Georgia State Bar No. 005610

State of Georgia }
} ss
County of Bibb }

Before me this day personally appeared Karen K. Daniels, who being duly sworn upon oath, deposes and states that she is the maker of the foregoing Affidavit, that she knows and understands the contents thereof, and that the statements made therein

are her own, and are true and correct to the best of her knowledge and belief.

Subscribed and sworn to before
me this 5th day of April 2005.

/s/ [Illegible]
Notary Public

5/9/08
My Commission Expires

PAUL H. CHAPPELL
Attorney at Law
1406 Princess Anne Street
Fredericksburg, Virginia 22401
TEL: (540) 374-1283 FAX: (540) 374-1284

Admitted in Maryland only

July 30, 2003

Department of the Treasury
Internal Revenue Service Center
Attn: Appeals Area Director
4800 Buford Highway-MS 93
Chamblee, Georgia 30341
FedEx Airbill No.: 8413-2836-5086

Re: Formal Protest – Notice and Demand
Karen K. Daniels, Esq. – Director of Practice

Dear Sir or Madam:

According to the Internal Revenue Manual, [IRM] 8.10.1.1.3.2, your office is responsible for reviewing reports by Internal Revenue Service, [IRS] employees to the Director of Practice alleging misconduct or violations set forth in Circular No. 230, §10.53 by professionals practicing before the IRS when the violation does not involve another IRS employee. Your report should contain sufficient detail, including any documentation or exhibits, to substantiate the information regarding each violation, a statement regarding whether or not the professional is known as a tax practitioner, and a copy of declarations filed pursuant to Circular No. 230 §10.3. The IRM goes on to state:

> "Unless the practitioner has engaged in *actual practice* before the Service, disciplinary proceedings may not be instituted; and *[c]are should be taken* to *ensure* that the *memo contains all necessary information*."

Given that this responsibility is assigned to the Area Director to read, sign and forward the reports to the Director of Practice, it falls upon you to validate whether or not the report is complete.

It appears your office initiated a report regarding Karen K. Daniels, Esq. of Macon Georgia, which was ultimately assigned to Jonathan Huth, Esq., Office of Professional Responsibility at the IRS National Office in Washington, D.C.

On February 21, 2003 Mr. Huth attempted to notify Ms. Daniels of an inquiry by a letter addressed to 1929 N.W. 12th Ter., Gainsville, Fl 32609-3420. Though the letter was marked personal and confidential it was opened by a person or persons unknown at that address and returned to Mr. Huth. Mr. Huth later affixed a small yellow note to this letter saying:

"Letter resent April 7, 03"

On or about April 7, 2003 Mr. Huth placed the typewritten letter dared February 21, 2003 in an envelope addressed to 145 Castlegate Road, Macon Georgia 31210, with the small yellow note still affixed; wherein he notified Ms. Daniels of his inquiry, offering her an opportunity to discuss the matter, provide documentation and/or request a formal

hearing. Ms. Daniels received the second mailing of the letter on or about April 11, 2003.

On May 6, 2003 I timely responded on behalf of Ms. Daniels, notifying Mr. Huth that Ms. Daniels had never practiced before the IRS and was therefore not subject to an inquiry. Based on Mr. Huths commentary in the letter it is obvious that serious intra-agency (26 U.S.C. §6103) disclosure violations have occurred regarding Ms. Daniels; pursuant thereto I reminded him of his duty to report said disclosure violations. In the event that Mr. Huth believed he had jurisdiction to proceed I requested copies of the informations and documents upon which he relied and requested, a hearing. Mr. Huth did not respond.

On July 14, 2003 I sent a second letter to Mr. Huth, containing an affidavit by Ms. Daniels, again requesting he respond providing Ms. Daniels with resolution in this matter. As of this date Mr. Huth has remained silent, refusing to respond. This refusal to respond by Mr. Huth constitutes violations of both the law and the agency's published procedures regarding correspondence; dereliction and negligence in the performance of his duty; and intentional, willful harassment.

In an effort to provide evidence that she was not engaged in practice before the IRS, Ms. Daniels submitted a Privacy Act Request dated July 11, 2003 seeking copies of any and/or all Forms 2848, Powers of Attorney and/or Declarations of Representation on file with the Chamblee Service Center. On July 16,

2003 the Disclosure Officer, M.P. Mahoney on behalf of Marie Twarog responded stating:

> "We have conducted a thorough search of our files. There are no records responsive to your request." *see* Certified Copies of Privacy Act Request, IRS response and Envelope attached hereto as Exhibits 1, 2, and 3 respectively.

It goes without saying, that your office was responsible for determining if Ms. Daniels was, in fact practicing before the IRS; and that a search of your records for Forms 2848, Powers of Attorney, and/or Declarations of Representation before making your referral to the Office of Director of Practice should have been conducted. It is obvious your office failed to perform this required act. It is equally obvious that your report submitted to the Office of Director of Practice was incorrect and incomplete.

Given that your office was responsible for conducting the initial inquiry, determining jurisdiction, apparent disclosure violations under 26 U.S.C. §6103 and referring the report, it falls to you to Facilitate the resolution of this matter.

Ms. Daniels' rights to privacy have been grossly violated; both slander and libel have occurred; her professional and personal reputations have been besmirched; her peace has been disturbed by reckless agency intimidation, and her records criminally trespassed.

Furthermore, she has been financially and emotionally damaged by the colorable acts perpetrated by your office and that of the Office of the Director of Practice/Office of Professional Responsibility.

Ms. Daniels is entitled to a letter of apology; immediate closure of this inquiry, and damages to the extent of her loss of time, attorneys and legal fees for the arbitrary, capricious and negligence practiced by your office and the Office of the Director of Practice/Office of Professional Responsibility.

Ms. Daniels expects your office to notify the Treasury Inspector General Tax Administration, [TIGTA] of the 26 U.S.C. §6103 disclosure violations, as well as the Conduct and Practice Violations, which have occurred in this matter perpetrated by your office and that of the Office of the Director of Practice/Office of Professional Responsibility.

Failure to immediately respond will be construed as an attempt to further violate my clients rights to privacy and fundamental due process necessitating the taking of any and all actions both administratively and legally available for remedy.

Thank you for promptly taking all available steps to provide Ms. Daniels with reimbursement and compensation for damages.

Sincerely,

/s/ Paul H. Chappell
Paul H. Chappell
Attorney for
Karen K. Daniels, Esq.

CC:

Congressman Jim Marshall
502 Cannon House
Office Building
Washington, D.C. 20515

Senator Zell Miller
257 Dirksen Senate
Building
Washington, D.C. 20510

Office of Director of Practice
Director
Department of Treasury
Internal Revenue
Service Center
1111 Constitution Ave., NW
Washington, DC 20224

Mr. Jonathan Huth
Department of Treasury
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224
N:C:SC:OPR

[SEAL] DEPARTMENT OF
THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

July 16, 2003

Karen K. Daniels
145 Castlegate Road
Macon, GA 31210

Dear Ms. Daniels:

This is in response to your Privacy Act request dated July 11, 2003.

Your request cannot be processed under the provisions of the Privacy Act. A request under the Privacy Act must specify the System of Records you [wish] to access. We have instead processed your request under the provisions of the Freedom of Information Act. The Freedom of Information Act provides for a broader [access] to tax records.

We have conducted a thorough search of our files. There are no records responsive to your request. The enclosed Notice 393, Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. 522, contains procedures and information regarding your appeal rights.

If you have any questions please contact M. P. Maloney, ID No. 07-01689, at phone number: 678-530-6655, or address: Atlanta – Internal Revenue Service

Center, PO Box 47-421, Stop 93, Doraville, GA 30362.
Please refer to our Case No. 07-2003-1618.

Sincerely,

/s/ M.P. Maloney
Marie Twarog
Disclosure Officer
for ID No. 07-08708
Atlanta – IRS Campus

Enclosure

PAUL H. CHAPPELL
Attorney at Law
1406 Princess Anne Street
Fredericksburg, Virginia 22401
TEL: (540) 374-1283 FAX: (540) 374-1284
Admitted in Maryland only

July 11, 2003

Department of the Treasury
Internal Revenue Service Center
1111 Constitution Ave., NW
Washington, DC 20224, N:C:SC:OPR
Attn: Jonathan Huth,
Office of Professional Responsibility
FedEx Airbill No.: 8413-2836-5259

Re: Karen K. Daniels – alleged professional matter

Dear Mr. Huth:

By letter dated May 6, 2003 and shipped to you by Federal Express[1], I effectively challenged the Office of Professional Responsibility's jurisdiction in this matter, and notified you of Disclosure Violations and also established the following material and dispositive facts:

a) Ms. Daniels has never had and has no powers of attorney and/or declarations of representation filed with your agency, *see attached Affidavit.*

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[1] FedEx Airbill Number: 839003788925 Received on: May 7, 2003 at 15:59 by H. Jackson, *see* computer confirmation attached hereto as Exhibit 1.

b) Your office has first hand knowledge that intra-agency information disclosure violations of Ms. Daniels tax return and tax return information have been made by IRS employees' breeching the restrictions imposed by section 6103 of the Code.

I requested that your office establish its jurisdiction over this matter by the production of any Power(s) of Attorney and/or Declaration(s) of Representation in your possession. I also requested that you schedule a hearing, as required should you conclude that you have jurisdiction to proceed.

Mr. Huth, I further requested that you respect the clearly established and published requirement(s) to notify the proper authorities of the disclosure violations, which have obviously occurred as evidenced in your correspondence addressed to Ms. Daniels.

It is a fact, Sir, that more than 60 days have elapsed since your office was notified of the disclosure violations and lack of jurisdiction in this matter. Mr. Huth, surely you are aware that it is both published procedure and established law that agency correspondence must be acknowledged within 10 days of receipt. If it is apparent upon receipt that incoming correspondence cannot be answered within 30 days of receipt, a request for extension of time within which to respond must be made within 10 days.

Your office has failed to do the following:

a) Acknowledge receipt of my correspondence; and

b) Request additional time to respond; and

c) Respond in any manner; and

d) Provide any document(s) establishing jurisdiction; and

e) Contact me to schedule a mutually convenient hearing date; and

f) Provide notice of disposition and/or intent to proceed;

g) Provide information on the corrective actions taken regarding the statutory disclosure violations.

In view of all of the above, Mr. Huth, your failures to respond and establish jurisdiction, constitute admissions of all dispositive facts asserted and the total absence of agency jurisdiction. Therefore, I demand that you acknowledge disposition of this matter in writing immediately upon receipt of this demand. Thank you for your prompt response

Sincerely,

/s/ Paul H. Chappell
Paul H. Chappell
Attorney for
Karen K. Daniels, Esq.

CC: Congressman Jim Marshall
502 Cannon House Office Building
Washington, D.C. 20515

Senator Zell Miller
257 Dirksen Senate Building
Washington, D.C. 20510

State of GEORGIA

County of BIBB

AFFIDAVIT

PERSONALLY APPEARED before me, the undersigned officer, duly authorized to administer oaths, Karen Kelly Daniels, Esq., who, after first being duly sworn, deposes and states as follows:

1.

As of this date, to the best of my knowledge, belief and recollection, I have never submitted nor provided a power of attorney or otherwise notice to the Internal Revenue Service of an appearance on behalf of or for a client(s) in regard to litigation of tax issues.

AFFIANT FURTHER SAYETH NOT.

/s/ Karen Daniels
Karen K. Daniels, Esq., Deponent

State of Georgia

ss

County of Bibb

Before me this day personally appeared Karen K. Daniels, who, after being duly sworn upon oath, deposes and states that she is the maker of the foregoing Affidavit, that she knows and understands the contents thereof, and that the statements made

therein are true and correct to the best of her knowledge and belief.

Subscribed and sworn to before me on this 8th day of July 2003.

/s/ Angela Cliburn
Notary Public

My Commission Expires:

7/25/05

ANGELA CLIBURN
Notary Public Houston County, Georgia
My Commission Expires July 25, 2005

[SEAL]
OFFICE OF
DIRECTOR
[ILLEGIBLE]

DEPARTMENT OF
THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 20, 2002

MEMORANDUM FOR WILLIAM J. DANIEL, JR.
REVENUE AGENT

FROM: /s/ J. S. Prater
Patrick W. McDonough
Director of Practice
N:C:SC:DOP

SUBJECT: Karen Kelly Daniels, Esq.

This is to acknowledge receipt of your referral concerning the above-named person. The information is under review by our legal staff.